

ECE REALTY & DEVELOPMENT, INC., PETITIONER, VS. NILDA O. SERAZON, RESPONDENT.

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a petition for review under Rule 43 of the Rules of Court which seeks to reverse and set aside the Decision[1] dated February 27, 2013 of the Office of the President affirming the Decision[2] dated July 30, 2009 of the Board of Commissioners, Housing and Land Use Regulatory Board (HLURB). Likewise assailed is the Office of the President's Resolution[3] dated June 26, 2013 which denied petitioner's Motion for Reconsideration.

The facts of the case:

Sometime in the later part of 1996, petitioner ECE Realty and Development, Inc. ("ECE") and Emilio Ching, its President, offered to respondent Nila O. Serazon on a "pre-selling basis" one of the units of their condominium project named Balagtas Royale Mansion located at the corner of Balagas and Leveriza Streets, Pasay City, Metro Manila. They subsequently entered into a Contract to Sell[4] concerning the purchase of Unit 2005 with an area of fifty-nine (59) square meters in the amount of P2,224,300.00. Petitioner was obligated under the Contract to Sell to deliver the subject unit on May 31, 1998. However, respondent was able to occupy the same only on September 17, 1998. Despite the occupancy by respondent, finishing touches of the subject unit was then still "on-going" to the annoyance of respondent.

Respondent was able to fully pay the consideration of the subject unit on March 20, 2000.

In the second quarter of 2000, several unit owners started complaining when they discovered that the area and size of the unit they purchased from petitioner differs from what appears in their respective Condominium Certificate of Title. In view of the discovery, respondent made a request to the office of the HLURB to conduct a survey and actual measurement on the subject unit. The HLURB Regional Office conducted actual measurement of the subject unit and found that her unit is only 53.2507 square meters, short of 5.7493 square meters from the 59 square meters she purchased.[5]

Respondent made several verbal and written demands against petitioner for the refund of the value of the deficiency of the area plus interest thereof, completion of the amenities and settlement for the breach of contract. Despite a final demand, petitioner failed and refused to comply. Hence, respondent filed this complaint against petitioner ECE and Emilio Ching for specific performance and damages specifically the refund of the purchase price corresponding to the deficiency in the floor area of the subject unit purchased by respondent.

In its Answer[6], petitioner ECE alleged that the complaint states no cause of action; the HLURB Expanded National Capital Region Field Office has no jurisdiction over the subject matter of the claim; and the cause of action of the complainant has prescribed. Petitioner claimed that the criteria in the measurement of respondent's unit is provided in the Master Deed of the Balagtas Villas and Balagtas Royale Mansion Condominium Project. Further, petitioner averred that the condominium unit of respondent has long been turned-over and occupied by her since September 17, 1998; hence, she is now estopped to pose the issue on delayed delivery after accepting

the turn-over of her condominium unit. On the other hand, Ching countered that the complaint states no cause of action against him for he merely acted as an agent of petitioner ECE, as its President and not in his personal capacity, hence, he incurs no personal liability. Moreover, Ching has always acted in good faith in running the material operations of petitioner ECE.

After the submission of the parties' respective position paper, the Housing and Land Use Arbitrator, Atty. Ma. Lorina J. Rigor, rendered a Decision^[7] dated August 9, 2007, the dispositive portion of which reads:

“WHEREFORE, in the light of the foregoing, judgment is hereby rendered as follows:

1. Ordering respondent ECE Realty and Development Inc. to refund to complainant Nilda O. Serazon the amount of P216,748.61 corresponding to the 5.7493-square meter difference in the area of subject unit plus the corresponding interests on said amount, with interest at the legal rate reckoned from the filing of the instant case until fully paid;
2. Ordering respondent ECE Realty and Development, Inc. to pay to complainant the amount of P20,000.00 as and by way of moral damages;
3. Ordering respondent ECE Realty and Development, Inc. to pay to complainant the amount of P20,000.00 as and by way of exemplary damages; and
4. Ordering respondent ECE Realty and Development, Inc. to pay to complainant the amount of P10,000.00 as and by way of attorney's fees.

SO ORDERED.”

Petitioner ECE and Ching interposed an appeal before the Board of Commissioners of the HLURB, which rendered a Decision^[8] on July 30, 2009 denying petitioner ECE and Ching's appeal and affirming with modification the August 9, 2007 Decision of the Regional Office. The Board of Commissioners dismissed the complaint against Emilio Ching stating that no acts were attributed to Ching in his personal capacity.

Petitioner ECE elevated the case to the Office of the President essentially invoking the case of *Donata Lim vs. ECE Realty and Development Co., Inc.* which was decided by the HLURB Board of Commissioners on January 23, 2004.

On February 27, 2013, the Office of the President issued a Decision affirming in toto the Board of Commissioner's ruling.

Petitioner's motion for reconsideration having been denied in the June 26, 2013 Resolution, petitioner filed the instant petition for review with the following issues, to wit:

I. ON PRESCRIPTION: WHETHER OR NOT THE OFFICE OF THE PRESIDENT COMMITTED GRAVE AND REVERSIBLE ERROR IN TOTALLY IGNORING AND DISREGARDING ARTICLE 1543 OF THE CIVIL CODE IN FAVOR OF RESPONDENT SERAZON.

II. WHETHER OR NOT THE OFFICE OF THE PRESIDENT COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT AFFIRMED THE DECISION OF THE HLURB WHICH IGNORED AND DISREGARDED ITS VERY OWN DECISION IN THE EARLIER CITED CASE OF *DONATA LIM VS. ECE REALTY & DEVELOPMENT CO., INC.* INVOLVING THE SAME ISSUE IN THE SAME CONDOMINIUM PROJECT OF PETITIONER HEREIN.

III. WHETHER OR NOT THE OFFICE OF THE PRESIDENT COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT AFFIRMED THE RULING OF THE HLURB THAT THE MASTER DEED OF 27 MARCH 1996 SHOULD NOT BE OVERRULED BY THE AMENDED MASTER DEED OF NOVEMBER,

1996.

IV. WHETHER OR NOT THE OFFICE OF THE PRESIDENT COMMITTED GRAVE AND REVERSIBLE ERROR IN AFFIRMING THE AWARD TO RESPONDENT HER PRAYER FOR REFUND AND DAMAGES.

Petitioner invokes Article 1543 of the Civil Code in claiming that respondent's cause of action had already prescribed. Since the subject unit was delivered to and accepted by respondent on September 17, 1998, she had six (6) months or up to March 15, 1999 to claim the value of the difference in the area of the subject unit. However, petitioner averred that respondent only filed the complaint on March 1, 2004, or after almost five (5) years from the delivery of the subject unit. Moreover, petitioner asserts that the Amended Master Deed of November 1996 should prevail over the March 1996 Master Deed in the measurement of the area of the condominium unit not only of respondent but of all the other condominium units.

The petition is bereft of merit.

The provision of Article 1543 of the Civil Code of the Philippines does not apply in this case. Said article provides:

ARTICLE 1543. The actions arising from Articles 1539 and 1542 shall prescribe in six months, counted from the day of delivery.

A review of cases involving the application of Articles 1539 and 1542 stated in Article 1543 refer to sales of real estates involving tracts of land.[9]

Article 1542, which involves the sale of real estate made for a lump sum, is not applicable in the sale of condominium units where the area is small as in this case (59 square meters) and in accordance with the approved plan for the condominium project. Article 1542 applies to cases where the area of parcels of land, object of the sale cannot be determined with specificity or mathematical accuracy that it can only be determined through an estimate of its area or through the lands' conspicuous boundaries. It is enough if its extent is objectively indicated with sufficient precision to enable one to identify it. Under Article 1542, the specific boundaries stated in the contract must control over any statement with respect to the area contained within its boundaries. Thus, it is the obligation of the vendor to deliver everything within the boundaries, inasmuch as it is the entirety thereof that distinguishes the determinate object.

In this case, it involves the sale of a condominium unit with a definite area of fifty-nine (59) square meters, more or less, as provided in the Contract to Sell, for a purchase price of P2,224,300.00.

What applies therefore is the prescriptive period for a written contract which is ten (10) years from the time the right of action accrues.[10]

The parties herein executed the Contract to Sell on June 20, 1997. Respondent discovered that the subject unit is short of 5.7493 square meters from the 59 square meters she purchased sometime in August 2000 when she requested the HLURB Office to conduct actual measurement of her unit. Despite repeated demands for the refund of the value of the deficiency of the area, petitioner refused. Respondent filed the instant complaint on March 1, 2004, which is well-within the ten-year prescriptive period.

Pertinent provision of the Contract to Sell states:

- UNIT PURCHASED

The Condominium/Townhouse Unit 2005-BRM located at the 20th FLOOR with an area of Fifty Nine (59.00) square meters, more or less, exclusive of share in the common areas in the same floor and forming part of the

BALAGTAS ROYALE MANSION located at Balagtas Street, Pasay City.

a). xxx

b). xxx The parties mutually agreed that in the course of any alterations an allowance of about (1) square meters, is reasonable.

xxx xxx xxx”

Based on the ocular inspection conducted by the HLURB Regional Office for the purpose of measuring the floor area, Engr. Lariosa found that the subject unit is only 53.2507 square meters, short of 5.7493 square meters from the 59.00 square meters stated in the contract.[11] Such difference in measurement is indeed not a reasonable allowance under the contract to sell but almost ten percent of the area sought to be delivered, therefore a proportional reduction of the purchase price is justified. As aptly ruled by the Board of Commissioners, viz:

“The above contractual stipulation precisely addresses the eventuality that some units, due to changes in designs or specifications, may not measure up to the original floor area stipulated in the contract. As stated in the said contract, the allowance of about 1 square meter in case of any alteration is reasonable. Hence, if the difference amounts to 5.7493 square meters, the same should be deemed not contemplated by the contract as “reasonable” for the price agreed upon, and a proportional reduction on the contract price should be effected. The Regional Office therefore correctly ruled , based on the ocular inspection report conducted by this Board on July 20, 2006, that respondent ECE should refund to complainant the principal amount of P216,748.61 plus the corresponding interest on said amount at the legal rate of 6% per annum.”

In measuring the subject unit, it should be the Amended Master Deed of March 27, 1996, which uses as criteria the “inside dimension”, that should be applied and not the Amended Master Deed of November 22, 1996 as claimed by petitioner. At the time of the execution of the Contract to Sell dated June 20, 1997, it is the Amended Master Deed of March 27, 1996 which is effective. The Amended Master Deed of November 22 1996 relied upon by petitioner, which uses the “exterior edge criteria”, only took effect on April 23, 2003 after it was approved by the HLURB Board of Commissioners.

The case of Donata Lim vs. ECE Realty & Development Co., Inc. vigorously asserted by petitioner was only decided by the Board of the Commissioners of the HLURB, hence, it is not the judicial decision of the Supreme Court contemplated under the doctrine of stare decisis.

Findings of fact by administrative agencies are generally accorded great respect, if not finality, by the courts by reason of the special knowledge and expertise of said administrative agencies over matters falling under their jurisdiction.[12] We find no grave and reversible error committed by the Office of the President when it affirmed the Decision of the HLURB Board of Commissioners, hence, We have no reason but to likewise affirm the same.

WHEREFORE, premises considered, the instant petition is DENIED. The assailed Decision dated February 27, 2013 and the Resolution dated June 26, 2013 rendered by the Office of the President is hereby AFFIRMED.

SO ORDERED.

Gonzales-Sison and Sorongon, JJ., concur.

[1] Rollo, pp. 37-39.

[2] Rollo, pp. 183-186.

[3] Rollo, pp. 41-42.

[4] Rollo, pp. 64-68.

[5] Rollo, p. 83.

[6] Rollo, pp. 105-110.

[7] Rollo, pp. 164-168.

[8] Rollo, pp. 183-186.

[9] Esquerra vs. Trinidad, G.R. No. 169890, March 12, 2007; Del Prado vs. Spouses Caballero, G.R. No. 148225, March 3, 2010; Sta. Ana, Jr. vs. Hernandez, G.R. No. L-16394, December 17, 1966.

[10] Article 1144 (1), Civil Code of the Philippines.

[11] See Decision dated August 9, 2007, Rollo, p. 166.

[12] Souses Hipolito vs. Cinco, G.R. No. 174143, November 28, 2011.

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